

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-11455-2017

Date of decision : 03.02.2022

Zonex Estates Private Limited and others

.... Petitioners

Versus

State of Haryana and others

...Respondents

CORAM: HON'BLE MR. JUSTICE RAVI SHANKER JHA, CHIEF JUSTICE
HON'BLE MR. JUSTICE ARUN PALLI

Present:- Mr. Mukul Aggarwal, Advocate,
for the petitioners.

Mr. Ankur Mittal, Addl. Advocate General, Haryana with
Mr. Saurabh Mago, Assistant Advocate General Haryana.

Mr. Lokesh Sinhal, Advocate,
for respondent No.3.

(The aforesaid presence is being recorded through video conferencing since the proceedings are being conducted in virtual Court).

RAVI SHANKER JHA, C.J. (ORAL)

1. The controversy involved in the matter at hand revolves around the applicability of Section 24 (2) of Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (for short, 'the Act of 2013') onto the facts of the case wherein the award under Section 11 of the Land Acquisition Act, 1894 was announced on 09.03.2006 i.e. more than five years prior to the commencement of the Act of 2013 on 01.01.2014 and as contended by the petitioners, neither the possession of the land is taken nor compensation has been paid/deposited. Therefore, the acquisition

proceedings qua the land in question have lapsed in view of Section 24 (2) of the Act of 2013.

2. The controversy cropped up around interpretation of Section 24 (2) of the Act of 2013 was put at rest by the Constitution Bench of the Supreme Court in the case of ***Indore Development Authority v. Manoharlal and others AIR 2020 SC 1496*** thereby laying down principles for declaring the acquisition deemed to have been lapsed under Section 24 (2) of the Act of 2013. The Apex Court has discussed in detail all the aspects necessary and relevant for interpreting Section 24 (2) of the Act of 2013. In this regard, reference is being made to the concluding paragraph of the judgment which is reproduced herein below:-

‘....1. Under the provisions of Section 24(1)(a) in case the award is not made as on 1.1.2014 the date of commencement of Act of 2013, there is no lapse of proceedings. Compensation has to be determined under the provisions of Act of 2013.

2. In case the award has been passed within the window period of five years excluding the period covered by an interim order of the court, then proceedings shall continue as provided under Section 24(1)(b) of the Act of 2013 under the Act of 1894 as if it has not been repealed.

3. The word ‘or’ used in Section 24(2) between possession and compensation has to be read as ‘nor’ or as ‘and’. The deemed lapse of land acquisition proceedings under Section 24(2) of the Act of 2013 takes place where due to inaction of authorities for five years or more prior to commencement of the said Act, the possession of land has not been taken nor compensation has been paid. In other words, in case possession has been taken, compensation has not been paid then there is no lapse. Similarly, if compensation has been paid, possession has not been taken then there is no lapse.

4. The expression ‘paid’ in the main part of Section 24(2) of the Act of 2013 does not include a deposit of compensation in court. The consequence of non-deposit is provided in proviso to Section 24(2) in case it has not been deposited with respect to majority of land holdings then all beneficiaries (landowners) as on the date of notification for land acquisition under Section 4 of the Act of 1894 shall be entitled to compensation in accordance

with the provisions of the Act of 2013. In case the obligation under Section 31 of the Land Acquisition Act of 1894 has not been fulfilled, interest under Section 34 of the said Act can be granted. Non-deposit of compensation (in court) does not result in the lapse of land acquisition proceedings. In case of non-deposit with respect to the majority of holdings for five years or more, compensation under the Act of 2013 has to be paid to the "landowners" as on the date of notification for land acquisition under Section 4 of the Act of 1894.

5. *In case a person has been tendered the compensation as provided under Section 31(1) of the Act of 1894, it is not open to him to claim that acquisition has lapsed under Section 24(2) due to non-payment or non-deposit of compensation in court. The obligation to pay is complete by tendering the amount under Section 31(1). Land owners who had refused to accept compensation or who sought reference for higher compensation, cannot claim that the acquisition proceedings had lapsed under Section 24(2) of the Act of 2013.*

6. *The proviso to Section 24(2) of the Act of 2013 is to be treated as part of Section 24(2) not part of Section 24(1)(b).*

7. *The mode of taking possession under the Act of 1894 and as contemplated under Section 24(2) is by drawing of inquest report/ memorandum. Once award has been passed on taking possession under Section 16 of the Act of 1894, the land vests in State there is no divesting provided under Section 24(2) of the Act of 2013, as once possession has been taken there is no lapse under Section 24(2).*

8. *The provisions of Section 24(2) providing for a deemed lapse of proceedings are applicable in case authorities have failed due to their inaction to take possession and pay compensation for five years or more before the Act of 2013 came into force, in a proceeding for land acquisition pending with concerned authority as on 1.1.2014. The period of subsistence of interim orders passed by court has to be excluded in the computation of five years.*

9. *Section 24(2) of the Act of 2013 does not give rise to new cause of action to question the legality of concluded proceedings of land acquisition. Section 24 applies to a proceeding pending on the date of enforcement of the Act of 2013, i.e., 1.1.2014. It does not revive stale and time-barred claims and does not reopen concluded proceedings nor allow landowners to question the legality of mode of taking possession to reopen proceedings or mode of deposit of compensation in the treasury instead of court to invalidate acquisition'.*

3. The exposition of law made in the aforesaid judgment can be summarized in the following manner for more clarity on the principles laid down by the Constitution Bench:-

(a) In all those cases wherein the acquisition process had been initiated but the award has not been announced under Section 11 of the Act of 1894, on the date of commencement of the Act of 2013 i.e. 01.01.2014, there is no lapse of proceedings and the same will continue, however, with the rider that the compensation has to be determined under the provisions of the Act of 2013. All those cases wherein the award under Section 11 of the Act of 1894 has been announced prior to commencement of the Act of 2013, the provisions of the Act of 2013 would have no bearing or application and the proceedings will continue in respect of those cases, as if the Act of 1894 has not been repealed.

(b) The word 'or' used in between both the contingencies of Section 24 (2) of the Act of 2013 is to be read as '***nor***' or as '***and***' which means that to seek lapsing of the acquisition proceedings both the contingencies must be fulfilled. Meaning thereby, that if the possession had been taken but the compensation was not received, there would be no lapse. Similarly, if compensation has been accepted but the possession has not been taken, there would be no lapsing.

(reference to para 99 and 363(2) of the judgment)

(c) As far as the aspect of compensation for the land acquired is concerned, the Supreme Court has categorically observed that the expression paid in the main part of Section 24 (2) of the

Act of 2013 does not include a deposit of compensation in court. What is required to be proved is that the compensation amount was tendered which has been explained in *para 203* that the tendering of the amount would mean that the amount is made available to the landowner and that would be a discharge of the obligation to make the payment and in that event such a person cannot be penalised for the default in making the payment. While referring to Section 31 (1), 31 (2), 34 of the Act of 1894 and comparing them with the para materia provisions i.e. Section 71 and 80 of the Act of 2013, the Apex Court has clarified that the only consequence of non-payment of compensation is to make the payment of interest as per Section 34 of the Act of 1894. Even the Supreme Court has further clarified that once the payment of compensation has been offered/tendered under Section 31 (1), the acquiring authority cannot be penalised for non-payment as the amount has remain unpaid due to refusal to accept by the landowner. To clarify it further, the Supreme Court has further observed that if a landowner has filed the reference for higher compensation he cannot claim that he was not paid the amount.

- (d) While reading the proviso to Section 24 of the Act of 2013 to be part of Section 24 (2) of the Act of 2013, the Supreme Court has clarified that in case, the offer for payment has been made but not deposited, liability to pay amount along with interest subsists and if not deposited for majority of holdings for five years or more, compensation under the Act of 2013

has to be paid to the landowners as on the date of notification for land acquisition under Section 4 of the Act of 1894. Regarding the deposit, it has been clarified in ***para 242*** of the judgment that for the higher compensation to follow, the money should not have been deposited with the Land Acquisition Collector or in the treasury or in the Court with respect to majority of land holdings, meaning thereby if it was deposited in any of the three modes with respect to majority of holdings, the higher compensation will not follow, but interest under Section 34 of the Act of 1894 would be the consequence.

- (e) As regards the mode of taking possession, the Supreme Court had clarified that drawing of inquest report/memorandum would mean that physical possession has been taken. The law with regard to vesting of land has once again been reiterated to hold that once the possession has been taken under Section 16 of the Act of 1894, the land vests in the State and there cannot be any divesting or lapsing.
- (f) While computing the gap period of five years between the date of award and commencement of the Act of 2013, any interim order subsisting is to be excluded which means that after excluding the interim order, the pre-requisite gap period of 5 years is not there, the provisions of Section 24 (2) cannot be invoked.
- (g) The Hon'ble Court has further clarified that if the acquisition of land had earlier been challenged and the acquisition was upheld, which means the proceeding stood concluded, the

umbrella protection of Section 24 (2) of the Act of 2013 cannot be invoked as it does not revive stale and time barred claims.

- (h) In para 337, the Hon'ble Court has made it clear that the provision of Section 24 (2) of the Act of 2013 is meant to be invoked by the beneficiaries i.e. landowners who were recorded so at the time of issuance of notification under Section 4 of the Act of 1894. Any subsequent purchaser, POA holder or otherwise, cannot invoke the provisions of Section 24 (2) of the Act of 2013.

4. As per the case put forth by the petitioners, petitioners No. 1 and 2 are owners of the land measuring 96 Kanals 18 Marlas situated in the revenue estate of Village Lakhnoula, Tehsil and District Gurgaon. The aforesaid land is stated to have been acquired by the State of Haryana vide notifications dated 17.09.2004 and 27.10.2004 issued under Section 4 and 6 of the Land Acquisition Act, 1894, followed by award dated 09.03.2006 for the public purpose namely, for Setting up of Chaudhary Devi Lal Industrial Model Township, Phase-V, Manesar to be planned as an integrated complex for Industrial, Institutional, Commercial, Recreational and other Public Utilities by Haryana State Industrial Development Corporation Ltd. The petitioners along with one previous owner filed a writ petition bearing CWP No. 3554 of 2006 titled as Brahma Parkash and others Vs. State of Haryana and others thereby challenging the acquisition proceedings. The said writ petition was dismissed by this Court vide order dated 16.04.2009 on the ground that it was filed after announcement of award. The said order was assailed

before the Division Bench in LPA No. 114 of 2010 which was also dismissed vide order dated 01.02.2010.

5. The perusal of order of dismissal of LPA No. 114 of 2010 shows that this Court had specifically considered the fact that while appellant No. 1, namely Braham Parkash, was owner of the land prior to the acquisition, appellant No. 2, i.e. petitioner No. 1 in the case at hand, purchased the land under acquisition on 16.08.2005 i.e. after the notification of acquisition was issued under Section 4 of the 1894 Act on 17.09.2004. Thus, observing that appellant No. 1 (Braham Parkash) having sold the land has no locus standi to challenge the acquisition proceedings and further, appellant No. 2 (petitioner No.1 in the case at hand) being subsequent purchaser is barred from challenging the acquisition proceedings in view of settled law by the Supreme Court, therefore, the appeal filed by the petitioners was dismissed vide order dated 01.02.2010. The SLP filed against the aforesaid order was also dismissed by the Apex Court vide order dated 13.12.2010.

6. Thereafter the petitioners once again assailed the acquisition proceedings by filing CWP No. 22351 of 2011 which was dismissed by this Court vide order dated 12.12.2011 after taking into account the aforesaid facts. The SLP filed against the said order was dismissed on 24.09.2012. The petitioners again took a chance of challenging the acquisition proceedings by invoking Section 24 (2) of the Act of 2013 by filing CWP No. 19889 of 2014 which was disposed of by this Court vide order dated 09.07.2015 with directions to the respondents to decide the representation filed by the petitioners. The respondents however, rejected the representation of the petitioners vide order dated 22.12.2016 and

hence, the petitioners have once again approached this Court by filing present writ petition in fourth round of litigation.

7. It is the case of the petitioners that despite having acquired the land in question and the acquisition having been upheld upto the Supreme Court, the State has failed to take possession of the land and till date they are in actual physical possession of the land in question. Further it has been contended that the petitioners have not received compensation amount and thus, the acquisition proceedings have lapsed in view of Section 24 (2) of the Act of 2013 as both the contingencies prescribed in Section 24 (2) of Act of 2013 are fulfilled.

8. Refuting the contentions of the petitioners, Mr. Ankur Mittal, learned Additional Advocate General, Haryana has taken three fold objections while praying for dismissal of the writ petitions. Firstly, he has contended that the present petition is not maintainable at the instance of the petitioners as they have no locus standi to challenge the acquisition proceedings being a subsequent purchaser having purchased the land after issuance of notification under Section 4 of the Act of 1894. In order to substantiate his contention, he has placed reliance on the judgment passed by three Judges' Bench of the Supreme Court in the case of ***Shiv Kumar and Anr v. Union of India and others, AIR 2019 SC 5374***, wherein the Apex Court after discussing the consistent law with respect to right of a subsequent purchaser, re-affirmed that the transaction of sale after issuance of Section 4 notification is void and such a purchaser cannot challenge the acquisition proceedings much less can he claim lapsing of acquisition proceedings under Section 24 (2) of Act of 2013. He has referred to para 337 of the judgment passed in ***Indore***

Development Authority (supra) wherein the Constitution Bench has affirmed the judgment passed in Shiv Kumar's case and observed that the provision of Section 24 (2) of Act of 2013 is not meant to be invoked on the basis of void transactions. He has also relied on the judgment passed by this Court in ***CWP No. 10645 of 2018 titled as Ram Prasad Yadav v. State of Haryana and others*** wherein a detailed discussion has been made with respect to the right of a subsequent purchaser as far as land acquisition proceedings are concerned. He has also placed reliance on another judgment passed by the three Judges Bench of the Supreme Court in ***M/s Vinayak House Building Cooperative Society Limited Vs. State of Karnataka and others, 2019 SCC Online SC 1092***, wherein the Apex Court has observed that neither the person who has sold the land after issuance of notification under Section 4 nor the person who has purchased the land after such notification, can challenge the acquisition proceeding or seek de-notification of the acquired land. Thus, it is his submission that the petitioners being subsequent purchaser cannot seek lapsing of acquisition proceedings and the present petition deserves dismissal on this ground alone.

9. The second objection taken by Mr. Mittal also relates to the maintainability of the present petition at the instance of the petitioners because it is self pleaded case of the petitioners that they had challenged the acquisition proceedings not just once but twice and had lost their challenge uptill the Supreme Court. Therefore, in view of the observations made by Apex Court in ***Indore Development Authority (supra)*** in Para No. 359 of the judgment, the petitioners cannot be allowed to use Section 24 (2) of the Act of 2013 as a tool to revive the

acquisition proceedings which have already been upheld by the Courts and the rights of the parties stand settled on merits.

10. Lastly, he contends that without prejudice to the submissions made above, the contingences mentioned in Section 24 (2) of the Act of 2013 are not fulfilled as the possession of the land stands duly taken and the compensation amount stands tendered. He submits that the contention of the petitioners of being in possession of the land in question is devoid of merit as the possession of the land was taken by recording Rapat Roznamcha No. 650 dated 09.03.2006 and 902 dated 31.05.2013 and same was handed over to the beneficiary department. Further, he contends that the compensation for land in question was duly tendered i.e., was made available to the petitioners; however they have chosen not to receive the same. In order to substantiate the same, the reliance has been placed on the fact that the majority of compensation i.e. 80% has already been disbursed to the landowners. In view of the aforesaid the prayer has been made to dismiss the instant writ petition.

11. After having perused the pleadings of both the contesting parties and recording their contentions, we have no hesitation to hold that the matter at hand is squarely covered by the principles laid down by the Supreme Court in the case of **Indore Development Authority (supra)** and the prayer of the petitioners claiming lapsing of acquisition proceedings deserves rejection. The first and foremost requirement for entertaining a writ petition is to see whether the person approaching the Court has locus to invoke extra-ordinary jurisdiction of this Court or not. The acquisition proceedings can be challenged by the landowners recorded in the revenue record at the time of issuance of notification under Section 4 of Act of

1894. Admittedly, the petitioners had purchased the land after issuance of notification under Section 4 of the Act of 1894, which implies that they are 'subsequent purchaser.' As contended by Mr. Ankur Mittal, the law as regards the locus of a subsequent purchaser to challenge the acquisition proceedings is well settled and consistently, it has been held that a subsequent purchaser has no right to assail or question the acquisition proceedings in any manner. He has referred to the judgment passed by this Court in case of **Ram Prasad Yadav (supra)** wherein this Court after discussing a catena of judgments on the point in issue, reiterated that a subsequent purchaser has no right to assail the acquisition proceedings. It is so because any encumbrance created on the land after issuance of notification under Section 4 of the Act of 1894 would not bind the State. Likewise, if any transaction of sale has been carried with respect to the land notified under Section 4 of Act of 1894, such transaction, as observed by the Apex Court in **Shiv Kumar (Supra)**, is a 'void transaction' and no rights can be said to have been flowed from such transactions which are void ab initio. Such vendee has no right to challenge the acquisition proceedings much less can he claim lapsing of acquisition proceedings under Section 24 (2) of Act of 2013.

12. The Supreme Court while dealing with the locus standi of a subsequent purchaser in **M/s Vinayak House Building Cooperative Society Limited (supra)**, has held that it is not only the subsequent purchaser who has no locus standi to challenge the acquisition proceedings, however, even the landowner who has sold his land after Section 4 notification loses his right to not only challenge the acquisition proceedings but to seek de-notification of acquired land as well. This is so because he has no more subsisting interest in the land having parted

with the land by way of sale, post the issuance of notification under Section 4. The law laid down by the Apex Court has its genesis to the basic jurisprudence governing the law of acquisition as per which the State is not bound by any sort of encumbrance which is created after issuance of notification under Section 4 of the Act of 1894 i.e. initiation of the acquisition proceedings. Once it is so, neither the land owner who has created such encumbrance nor the person in whose favour it is created, can bind the State in any manner. Therefore, the person who has purchased the land after initiation of acquisition is precluded from challenging the acquisition proceeding in any manner, so as the person selling the land as he has no more subsisting interest in the land in question.

13. Even though, the undisputed fact of the petitioners being subsequent purchaser, is sufficient to foreclose the doors for them but since the petitioners have claimed themselves to be in physical possession of the land and have claimed that acquisition proceedings have lapsed in view of Section 24 (2) of Act of 2013, we would like to test this argument of the petitioners on the touchstone of the interpretation made by the Supreme Court and the guiding principles laid there.

14. Though the petitioners have contended that they are in actual physical possession of the land in question, however, the said averment is not tenable in view of the interpretation of '*physical possession*' made by the Apex Court in ***Indore Development Authority (supra)*** wherein the Hon'ble Court has categorically held that the word 'possession' used in the Act of 1894 has same meaning as that of 'physical possession' used

in Section 24 (2) of the Act of 2013. When the State Government acquires the land and draws memorandum of taking possession which in the present case is by recording Rapat Roznamcha No. 650 dated 09.03.2006 and 902 dated 31.05.2013 pursuant to which Mutation No. 1660 dated 27.06.2013 was sanctioned in favour of the beneficiary department. Thereafter even if the landowner retains the possession of the land, he is a trespasser, and such possession of trespasser enures for his benefit and on behalf of the owner i.e. State. Since possession has been taken by recording Rapat Roznamcha No. 650 dated 09.03.2006 and 902 dated 31.05.2013, the plea of the petitioners that they are in physical possession of the land is hereby rejected. If at all possession has been retained by them, it is only as trespassers and not as owners. As a consequence thereof, one of the essentials for claiming lapsing of acquisition proceedings goes.

15. As far as aspect of compensation is concerned, it is specific stand of the respondents that the compensation amount was duly tendered and was made available to the landowners including the petitioners. In order to substantiate same, reference has been made to the fact that approximately 80% of the total compensation amount was disbursed to the land owners. This fact is sufficient to show that the compensation was duly tendered, and the petitioners have themselves chosen not to receive the same, which they are at liberty to receive. Once it is so, the second contingency prescribed in Section 24 (2) of the Act of 2013 also goes and thus, as none of the contingencies prescribed in Section 24 (2) of the Act of 2013 is fulfilled, the deeming fiction of lapsing provided under Section 24 (2) of the Act of 2013 cannot be invoked. Since none of the contingencies mentioned in Section 24 (2) of the Act of 2013 is fulfilled

as possession of the land stands taken and the compensation stands duly tendered, therefore, no declaration as regards lapsing of acquisition proceedings can be made in the case at hand.

16. Even otherwise, we are in complete agreement with Mr. Mittal that the instant petition is not maintainable at the instance of the present petitioners as this is the fourth round of litigation initiated at the instance of the petitioners after having lost earlier challenges made to the acquisition proceedings as discussed herein above. Now, the petitioners cannot be allowed to reopen the concluded proceedings under the garb of Section 24 (2) of the Act of 2013.

17. Mr. Ankur Mittal on the strength of the facts pleaded in the written statement has vehemently contended that the State acquired the land for the public purpose for Setting up of Chaudhary Devi Lal Industrial Model Township, Phase-V, Manesar to be planned as an integrated complex for Industrial, Institutional, Commercial, Recreational and other Public Utilities by Haryana State Industrial Development Corporation Ltd. The land in question is very much essential to achieve the public purpose and it affects the planning of Sector dividing road of Sector 81, 81A, 82 and 82A and also affects proposed 11 nos. of Industrial Plots, 30 mtr wide road, Group Housing in Sector 82 and area reserved for commercial in Sector 82A, IMT, Manesar as per the layout plan. We have considered this part of argument raised by the respondents and we are in complete agreement with the same as this is an important factor to be kept in mind while dealing with the case arising out of the acquisition of land to achieve the public purpose and it is the State/its authority who

is in the best position to decide about utilization of the land acquired, after it having been vested in State.

18. As a sequel in the wake of the above conspectus and in view of law summarized in para 363 of *Indore Development Authority (supra)*, specifically after having recorded that in the case in hand, petitioners are subsequent purchaser, the physical possession of the land in question having been taken, the obligation for payment of compensation stands discharged and also considering that the land in question is very much essential to achieve the public purpose, besides observing that the petitioners have lost in two rounds of litigation, we have no hesitation to hold that in the instant case, the State has fully discharged its obligation qua both the contingencies occurring in Section 24 (2) of the Act of 2013 and it being so, the present petition merits dismissal and hence, the instant petition is dismissed.

19. Having dismissed the main writ petition, pending application, if any, also meet the same fate. Status quo, if any, stands vacated.

(RAVI SHANKER JHA)
CHIEF JUSTICE

(ARUN PALLI)
JUDGE

February 03, 2022
ndj

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No